

42-3,102. Procedure upon failure of proprietors to construct or maintain head gate; costs; attorney fees; sale of proprietors' rights to pay cost; liability of proprietors; penalty for unlawful acts. If the proprietors of any canal, ditch, conduit or other works for diverting the water of any natural source shall refuse or fail to erect at or near the head of such works the head gate required by this act, or to maintain the same in good order as hereby required, the officer having authority so to do shall, whenever necessary in order to effect the distribution of the waters of the district in conformity with the statutes and the order of any court having jurisdiction, exclude the water of such stream from such ditch, conduit or other works by filling such ditch, conduit or other works at or near the head thereof, or by cutting the banks thereof, or in such other way as to him may seem effective, having due regard to the cost thereof; and the reasonable cost of such filling or other work shall be paid by the board of commissioners of the county wherein the head of such ditch, conduit or other works may be situate, and may, together with a reasonable attorney's fee to be fixed by the court, be recovered by such county in any court of competent jurisdiction; and the judgment of the court shall be a lien upon and against such ditch, conduit or other works and the appurtenances thereof, and all right of the proprietors thereof to carry or enjoy the waters diverted or carried thereby, and shall direct the sale of such ditch, conduit or other works and the right of the proprietors aforesaid in satisfaction thereof, and such judgment may be enforced by special execution or other proper process.

No such sale shall divest or impair the right of any person entitled to the use of water from such ditch, conduit or other works by agreement with or license from the person or persons so in default, but all lawful fees and other sums of money payable by such consumer in respect to the carriage of water by means of such works shall thereafter be payable to the purchaser at such sale.

Every such sale shall be made as a sale of real estate, and redemption therefrom may be made in the manner provided by law in the case of land sold on execution.

Such proprietors so in default shall be liable for all injury and damages occasioned any consumer of water lawfully entitled thereto from such ditch, conduit or other works by the willful or negligent failure of such proprietors to comply with the provisions of this act; and if any person, without first constructing the head gate therein as required by this act, shall open any such canal, ditch, conduit or other works after the same shall have been filled by the officer having the authority to do so, or turn the water into such canal, ditch, conduit or other works after the same shall have been excluded therefrom pursuant hereto, or, having control of such works, shall knowingly permit water to flow therein after the same shall have been so closed or the water excluded therefrom as aforesaid, pursuant hereto, every person so offending shall be deemed guilty of a misdemeanor, and shall be fined in any sum not exceeding three hundred dollars, or imprisoned in the county jail not exceeding six months, or punished by both such fine and imprisonment, in the discretion of the court wherein such conviction is had.

History: L. 1891, ch. 133, art. 8, § 14; May 20; R.S. 1923, 42-3,102.